IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 439 OF 2006

SMT. NEETA BHALCHANDRA KALGHATGI AND 9 ORS., ...Petitioners

Versus

SHRI NILCONTA G.S. AMONKAR AND 3 ORS., ...Respondents

Mr. Sudesh Usgaonkar, Advocate for the petitioners.

Ms. Sudha Pai, Advocate for the respondent no.1.

Coram:- J. N. PATEL, J.

Date:- 16th November, 2006

P.C.

Ms. Pai waives services for respondent no.2 and says that she will file Wakalatnama within a weeks time on her behalf.

Heard.

Learned Counsel for the petitioner (original defendants no.1 to 10) states that respondents no.3 and 4 having already sold the share and are not interested in prosecuting the matter and therefore they need not be served. The statement is accepted at the risk of the learned Counsel for the petitioners.

Learned Counsel for the parties state that the petition can be disposed of at the stage of admission. It is the case of the petitioner (original defendants no.1 to 10), that by order dated 10.11.2005 the defendants have been deprived of leading evidence and the case has been closed for evidence of defendants no.11 and 12 who are respondents no.3 and 4 in this petition.

The learned Counsel appearing for the respondents/plaintiffs states that the defendants have been prolonging the proceedings and therefore the learned Trial Court was justified in passing the impugned order and that the suit is pending from the year 1993 and the defendants have failed to lead evidence inspite of repeated opportunities given to them.

In order to give a fair opportunity to the petitioners (defendants no.1 to 10) particularly considering that the subject matter of the suit is partition between the parties, this Court is of the view that the respondents/plaintiffs can be sufficiently compensated. The learned Counsel for the petitioners states that the defendants propose to file affidavit of witness on behalf of defendants no.1 to 10 i.e. DW2 which is the only evidence he proposes to tender, the affidavit is also annexed.

The learned Counsel for the petitioners also assures this Court that no further adjournment will be sought on behalf of the defendants no.1 to 10 and will cooperate with the Trial Court to dispose of the suit by prosecuting it from day to day if Trial Court is issued direction.

Therefore in the facts and circumstances, this Court quash and set aside the order dated 10.11.2005. The defendant has already tendered the affidavit of DW2 in the Trial Court. The Trial Court is directed to take it on record.

The defendants shall keep their witness present on the next date i.e. 21.11.2006 for cross examination by the respondents/plaintiffs and would not seek any adjournment. Thereafter the Trial Court to proceed inaccordance with law and dispose of the suit by taking up the matter from day to day preferably within three months as the Trial Court itself has observed that it is a seven years old matter. This is on the condition that the petitioners shall deposit a sum of Rs.5,000/- in the Trial Court as costs to be paid to the plaintiffs. The payment of costs will be condition precedence and to be deposited on or before 21.11.2006. On failure to

deposit costs, the order passed by this Court permiting the petitioners to lead evidence stands recalled and the petition be dismiss.

The petition is disposed in the aforesaid terms. Authenticated copy of the order be furnished to the parties and bring it in notice to the office file.

J. N. PATEL, J.

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